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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 UNITED STATES OF AMERICA,  
12 Petitioner,  
13 v.  
14 JUAN URIBE,  
15 Respondent.

Case No.: 13-CR-1237-2 L

**ORDER DENYING MOTION FOR  
MODIFICATION OF TERM OF  
IMPRISONMENT PURSUANT TO  
18 U.S.C. § 3582(C)(2)**

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17 On November 12, 2015, Petitioner Juan Uribe (“Petitioner”), proceeding *pro se*,  
18 filed a motion for relief of sentence pursuant to 18 U.S.C. § 3582(c)(2). Petitioner’s  
19 motion is based upon retroactive Amendment 782 of the United States Sentencing  
20 Guidelines that pertain to drug trafficking offenses which became effective November 1,  
21 2014. The Government filed an opposition to the motion. For the reasons set forth  
22 below, Petitioner’s motion is **DENIED**.

23 **BACKGROUND**

24 Petitioner pled guilty to Conspiracy to Distribute Methamphetamine in violation of  
25 21 U.S.C. §§ 841(a)(1) and 846. On January 6, 2014, this Court sentenced Petitioner to  
26 72 months in the custody of the Bureau of Prisons, finding that the base offense level was  
27 32. A 3 point reduction was applied for acceptance of responsibility, for an adjusted base  
28 offense level of 29. Based on Petitioner’s criminal history category of IV, the sentencing

1 range was 121 to 151 months. After considering the factors in 18 U.S.C. § 3553(a), the  
2 Court sentenced Petitioner to 72 months.

### 3 DISCUSSION

4 Petitioner now moves for a reduction of his sentence, pursuant to 18 U.S.C. §  
5 3582(c)(2), based on Amendment 782 to the Sentencing Guidelines. Amendment 782  
6 generally reduces the base offense level for drug trafficking offenses in § 2D1.1(c) of the  
7 Sentencing Guidelines by two levels. *See* Amendment 782, Supplement to Appendix C,  
8 Amendments to the Guidelines Manual. Petitioner falls within the purview of this  
9 change.

10 A motion for reduction of sentence under § 3582(c)(2) “is simply a vehicle through  
11 which appropriately sentenced prisoners can urge the court to exercise leniency to give  
12 [them] the benefits of an amendment to the guidelines.” *United States v. Townsend*, 98  
13 F.3d 510, 513 (9th Cir. 1996) (quoting *United States v. Whitebird*, 55 F.3d 1007, 1011  
14 (5th Cir. 1995) (internal quotation marks omitted)). Whether to reduce a sentence under  
15 § 3582(c)(2) is a discretionary decision. *See* 18 U.S.C. § 3582(c)(2) (“[T]he court *may*  
16 reduce the term of imprisonment.”) (emphasis added); *Townsend*, 98 F.3d at 512 (“[T]he  
17 decision whether to reduce a sentence under § 3582 is within the discretion of the district  
18 court judge.”); *United States v. Cueto*, 9 F.3d 1438, 1440 (9th Cir. 1993) (“Courts have  
19 discretion to reduce a previously imposed term of imprisonment when the Sentencing  
20 Commission reduces the sentencing range, and the reduction is ‘consistent with  
21 applicable policy statements issued by the Sentencing Commission.’ ”) (quoting 18  
22 U.S.C. § 3582(c)(2)).

23 In determining whether a sentence should be modified following amendment of the  
24 Guidelines, the Court should consider the term of imprisonment that it would have  
25 imposed had the amendment to the Guidelines been in effect at the time the particular  
26 defendant was sentenced. U.S.S.G. § 1B1.10(b). In addition, the Court must consider the  
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1 18 U.S.C. § 3553(a) factors<sup>1</sup> and the danger to the public created by any reduction in a  
2 defendant's sentence. *Id.* at cmt. n. 1(B). The Court may also consider the defendant's  
3 post-sentencing conduct. *Id.*

4 Applying the amended Guidelines, Petitioner's new base offense level would now  
5 be a 30, rather than a 32, and his adjusted offense level would be 27. Petitioner remains  
6 in a criminal history category IV. Neither the Fast Track departure nor the variances are  
7 calculated in the amended guidelines. Therefore, the resulting applicable guideline range  
8 is 100 to 125 months.

9 When the Court previously considered the §3553(a) factors at Petitioner's  
10 sentencing, the Court believed that a below-Guideline sentence was appropriate. After  
11 considering the §3553(a) factors anew, the danger to the public created by any reduction  
12 in Petitioner's sentence, the Court finds no further reduction in Petitioner's sentence is  
13 warranted. Petitioner's original 72 month sentence is still less than the low-end of the  
14 new Guideline range. The Court considers the originally imposed sentence as the  
15 minimum necessary to address Petitioner's conduct, and thereby declines to reduce his  
16 sentence further.

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22 <sup>1</sup> Section 3553(a) directs a court to consider the following factors in determining the particular sentence  
23 to be imposed: "(1) the nature and circumstances of the offense and the history and characteristics of the  
24 defendant; (2) the need for the sentence imposed: (A) to reflect the seriousness of the offense, to  
25 promote respect for the law, and to provide just punishment for the offense; (B) to afford adequate  
26 deterrence to criminal conduct; (C) to protect the public from further crimes of the defendant; and (D)  
27 to provide the defendant with needed educational or vocational training, medical care, or other  
28 correctional treatment in the most effective manner; (3) the kinds of sentences available; (4) the kinds of  
sentence and the sentencing range established for: (A) the applicable category of offense committed by  
the applicable category of defendant as set forth in the guidelines... (5) any pertinent policy statement...  
(6) the need to avoid unwarranted sentence disparities among defendants with similar records who have  
been found guilty of similar conduct; and (7) the need to provide restitution to any victims of the  
offense." 18 U.S.C. § 3553(a).

1 **CONCLUSION**

2 Based on all of the above considerations, Petitioner's motion for a reduction in his  
3 sentence is **DENIED**.

4 **IT IS SO ORDERED.**

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6 Dated: November 9, 2017

7   
8 Hon. M. James Lorenz  
9 United States District Judge

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11 COPIES TO:

12 PETITIONER

13 U.S. ATTORNEY'S OFFICE  
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